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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

RHONDA JEAN ZUNIGA

Plaintiff,

vs.

NANCY A. BERRYHILL, Acting
Commissioner of Social Security

Defendant.

CASE No. 13-cv-01678-YGR

**ORDER ON CROSS MOTIONS FOR SUMMARY
JUDGMENT**

Dkt. Nos. 49, 58

Plaintiff Rhonda Jean Zuniga filed this action against defendant Nancy A. Berryhill as Acting Commissioner of the Social Security Administration (“Commissioner”) seeking judicial review of the Commissioner’s finding that she was not disabled *prior* to April 22, 2013, under section 1614(a)(3)(A) of the Social Security Act (“SSA”).¹ Pending before the Court are the parties’ cross-motions for summary judgment. (Dkt. Nos. 49, 58.) Plaintiff argues that the Administrative Law Judge (the “ALJ”) erred by (i) failing to reevaluate Zuniga’s subjective testimony of migraines in light of Dr. Lee’s new medical opinion; (ii) using boilerplate language to reject Zuniga’s testimony on the intensity, persistence, and limiting effects of her migraines; (iii) affording “little weight” to the medical opinion of Dr. Rubin; and (iv) failing to give any consideration to numerous medical sources, namely Dr. Saphir, Dr. Dolnak, Dr. Dwyer, Dr. McMahon, Dr. Cheng, Dr. Speradino, Dr. Weems, and Dr. Truong. Based thereon, plaintiff seeks vacatur with a finding of disability and an award of benefits.

¹ Not at issue is the determination of the California Disability Determination Services dated February 7, 2014, that plaintiff has been disabled since April 22, 2013. (Dkt. No. 27-8.)

1 Having carefully considered the papers submitted and the administrative record in this
2 case, and for reasons set forth below, plaintiff's motion for summary judgment is **DENIED**, and
3 defendant's cross-motion is **GRANTED**.

4 **I. PROCEDURAL BACKGROUND**

5 Zuniga filed her first application for a period of disability and disability insurance benefits
6 with the Social Security Administration (the "SSA") on February 29, 2008, claiming that she had
7 been disabled since October 1, 2007. (Dkt. No. 41, Administrative Record ("AR") 826.) Plaintiff
8 subsequently amended her application to allege that she had been disabled since March 31, 2004.
9 (*Id.*) Her claim was denied on December 23, 2009. (*Id.*) Plaintiff appealed, and on February 14,
10 2012, U.S. District Court Judge Charles R. Breyer remanded the case for rehearing to allow the
11 Commissioner to consider new evidence submitted by plaintiff which contained opinions from
12 physicians on plaintiff's ability to work. (*Id.* 868.)

13 On March 16, 2010, Zuniga filed a second application for a period of disability and
14 disability insurance. (*Id.* 827.) Plaintiff appeared at a second hearing before an ALJ (the "Initial
15 ALJ") on February 15, 2012, who found that he did not have jurisdiction over plaintiff's second
16 application because the Appeals Council had not yet remanded plaintiff's first application. (*Id.*
17 826.) The Initial ALJ therefore issued a "recommended decision" to reject plaintiff's second
18 application on April 19, 2012. (*Id.* 833.)

19 On July 31, 2012, the Appeals Council issued an order (i) remanding the first application
20 for consideration of the new evidence, (ii) vacating the Initial ALJ's recommended decision
21 regarding the second application, (iii) consolidating the first and second applications, and (iv)
22 directing the Initial ALJ to reevaluate Zuniga's credibility "and address whether, in light of the
23 new information, the claimant's impairments further limit" her functional capacity and ability to
24 find full-time employment. (*Id.* 878.)

25 A third hearing was held on November 7, 2012. (*Id.* 908.) In an order dated January 30,
26 2013, the Initial ALJ once again found that the plaintiff was "not disabled." (*Id.* 914.) Zuniga
27 appealed for a remand pursuant to 42 U.S.C. § 506(g) on April 12, 2013. (Dkt. No. 27.) On March
28 11, 2015, Judge Breyer issued an Order granting plaintiff's motion for remand for further

1 consideration of a new medical opinion. Thus, the Order provided:

2 The Court recognizes that the correlation identified by Dr. Lee is not necessarily
3 causation and that ALJ Mazzi has reviewed Ms. Zuniga’s substantial record
4 multiple times. However, in light of ALJ Mazzi’s dismissal of Ms. Zuniga’s
5 migraine claims as not supported by medically acceptable diagnostic techniques,
6 the Court cannot ignore that Dr. Lee has arguably tied these claims to such
7 techniques. [Cite.] ALJ Mazzi did not have the opportunity to review Dr. Lee’s
8 opinion and assessment of the MRI records. Therefore the Court finds that Dr.
9 Lee’s opinion correlating Ms. Zuniga’s migraines with her history of stroke,
10 indicated by medically acceptable diagnostic techniques, is new material evidence
which could have changed the outcome of the Commissioner’s Decision had it
been available at the time of ALJ Mazzi’s adjudication. [Cite.] Further
administrative proceedings will allow the Commissioner to re-evaluate Ms.
Zuniga’s credibility and address whether, in light of the new evidence, Ms.
Zuniga’s impairments also existed during the period adjudicated under the
January 2013 Decision.

11 (Dkt. No. 37 at 10–11 (footnote and internal citations omitted).)

12 Thereafter, a fourth hearing was held before a new ALJ who issued the decision addressed
13 herein on October 18, 2016. (AR 3717–3738.) The new ALJ denied plaintiff’s application was
14 denied with regards to the time period prior to April 22, 2013. (*Id.* at 3737.) Plaintiff appealed and
15 on January 18, 2017, Judge Breyer granted the parties’ stipulation to reopen the case for summary
16 judgment pleading. (Dkt. No. 40.) The above-captioned matter was reassigned to this Court on
17 October 13, 2017. (Dkt. No. 53.)

18 **II. LEGAL FRAMEWORK**

19 This Court has jurisdiction under 42 U.S.C. section 405(g). The Court may reverse an
20 ALJ’s decision only if it “contains legal error or is not supported by substantial evidence.” *Orn v.*
21 *Astrue*, 495 F.3d 625, 630 (9th Cir. 2007). Substantial evidence is “such relevant evidence as a
22 reasonable mind might accept as adequate to support a conclusion.” *Burch v. Barnhart*, 400 F.3d
23 676, 679 (9th Cir. 2005) (quoting *Magallanes v. Bowen*, 881 F.2d 747, 750 (9th Cir. 1989)). It is
24 “more than a mere scintilla but less than a preponderance.” *Bayliss v. Barnhart*, 427 F.3d 1211,
25 1214 n.1 (9th Cir. 2005) (quoting *Tidwell v. Apfel*, 161 F.3d 599, 601 (9th Cir. 1999)). Where the
26 evidence is susceptible to more than one rational conclusion, the Court must uphold the ALJ’s
27 decision. *Burch*, 400 F.3d at 679.

1 The SSA employs a five-step sequential framework to determine whether a claimant is
2 disabled. At Step One, the ALJ must determine whether the claimant is engaged in substantial
3 gainful activity. 20 C.F.R. § 404.1520(b). A person is engaged in substantial work activity if her
4 work involves significant physical or mental activities. 20 C.F.R. § 404.1572(a). Gainful work
5 activity is defined as “work usually done for pay or profit,” regardless of whether the claimant
6 receives a profit. 20 C.F.R. § 404.1572(b). If the claimant is engaged in substantial gainful
7 activity, she is not disabled. If the claimant does not engage in substantial gainful activity, then
8 the ALJ proceeds to Step Two of the evaluation.

9 At Step Two, the ALJ must determine whether the claimant has an impairment or
10 combination of impairments that is severe. 20 C.F.R. § 404.1520(c). A “severe” impairment is
11 defined in the regulations as one that significantly limits an individual’s ability to perform basic
12 work activities. If the claimant does not have a severe impairment (or combination of
13 impairments) that meets the duration requirement of 20 C.F.R. § 404.1509,² she is not disabled
14 pursuant to the regulation. Otherwise, the ALJ proceeds to Step Three.

15 At Step Three of the sequential evaluation, the ALJ must determine whether a claimant’s
16 impairment or combination of impairments “meets or equals” the criteria of an impairment listed
17 in 20 C.F.R. Part 404, Subpart P, App. 1., 20 C.F.R. §§ 404.1520(d), 404.1525, and 404.1526. If
18 the claimant’s impairment or combination of impairments meets the criteria of a listing and the
19 duration requirement, the claimant is disabled. 20 C.F.R. § 404.1509. If the impairment or
20 combination of impairments does not meet the criteria of a listing or does not meet the duration
21 requirement, the ALJ proceeds to the next step.

22 Before reaching Step Four in the sequential evaluation, the ALJ must determine the
23 claimant’s residual functional capacity (“RFC”). 20 C.F.R. § 404.1520(e). A claimant’s RFC
24 consists of her ability to engage in physical and mental work activity on an ongoing basis, in spite
25 of any limitations from impairments. The ALJ considers both severe and non-severe impairments

27 ² The duration requirement specifies that the impairment “must have lasted or must be
28 expected to last for a continuous period of at least 12 months” unless it is “expected to result in
death.” 20 C.F.R. § 404.1509.

1 in determining the claimant's RFC. 20 C.F.R. §§ 404.1520(e), 404.1545.

2 At Step Four, the ALJ must determine whether the claimant has the RFC to perform past
3 relevant work. 20 C.F.R. § 404.1520(f). If the claimant has the RFC to perform past relevant
4 work, she is not disabled. If the claimant is unable to do past relevant work or has no past relevant
5 work, the ALJ proceeds to the final step in the sequential evaluation.

6 At Step Five, the ALJ considers the claimant's RFC, age, education, and work experience
7 in determining whether the claimant can perform any other work besides past relevant work. 20
8 C.F.R. § 404.1520(g). "Substantial work activity is work activity that involves doing significant
9 physical or mental activities. . . . [W]ork may be substantial even if it is done on a part-time basis
10 or if you do less, get paid less, or have less responsibility than when you worked before." 20
11 C.F.R. §§ 404.1572(a), 16.972(a). If the claimant can perform other work, she is not disabled.
12 Otherwise, she is found to be disabled.

13 In any action brought by or against the United States, the Equal Access to Justice Act
14 requires that "a court shall award to a prevailing party other than the United States fees and other
15 expenses . . . unless the court finds that the position of the United States was substantially justified
16 or that special circumstances make an award unjust." 28 U.S.C. § 2412(d)(1)(A).

17 III. THE ALJ'S DECISION

18 The ALJ applied the five-step sequential analysis to determine whether plaintiff was
19 disabled and eligible for disability insurance benefits. A summary of her decision follows below.

20 A. Step One

21 At Step One, the ALJ credited plaintiff's testimony and found that she had not engaged in
22 substantial gainful activity since February 29, 2008, the alleged onset date. (AR 3724.)

23 B. Step Two

24 At Step Two, the ALJ determined that the plaintiff "suffered from the following severe
25 impairments: obesity, degenerative disc disease of the lumbar spine, asthma, hypothyroidism,
26 history of migraine headaches, [] affective disorder, and symptoms of sleep apnea." (*Id.*) The ALJ
27 found that these impairments "more than minimally affect the claimant's ability to perform basic
28 work activities." (*Id.* at 3725)

1 **C. Step Three**

2 At Step Three, the ALJ found that plaintiff did not have an “impairment or combination of
3 impairments that meets or medically equals the severity of one of the listed impairments in 20
4 C.F.R. Part 404, Subpart P, Appendix 1.” (*Id.*) First, the ALJ reasoned that obesity and headaches
5 are not listed impairments. (*Id.*) Second, she stated that “claimant’s degenerative disc disease does
6 not meet or equal listing 1.04 . . . because the record does not demonstrate compromise of a nerve
7 root . . . or the spinal cord with additional findings of . . . evidence of nerve compression[,] . . .
8 spinal arachnoiditis[], . . . [or] lumbar spinal stenosis resulting in pseudoclaudication.” (*Id.* at
9 3725.) Third, with regard to plaintiff’s asthma, the ALJ found “no objective medical evidence
10 supporting a conclusion that [plaintiff’s] condition meets or equals the criteria of Section 3.02A”
11 due to a lack of “evidence of asthma attacks in spite of prescribed treatment and requiring
12 physician intervention with an occurrence of at least once every two months or at least six times a
13 year, or in-patient hospitalization for longer than twenty-four hours for control of asthma.” (*Id.* at
14 3725.) Fourth, the ALJ stated that plaintiff’s sleep apnea did not meet or equal Listing 3.09 which
15 “requires clinical evidence of cor pulmonale . . . with [] a mean pulmonary artery pressure of
16 greater than 40 mm HG [] or arterial hypoxemia.” (*Id.* at 3725.) Fifth, she found plaintiff’s
17 hypothyroidism did not meet or equal Listing 9.03 or 9.04 because the “medical evidence of record
18 does not reveal significant limitations caused by a thyroid disorder.” (*Id.* at 3726.) Finally,
19 turning to plaintiff’s affective disorder, the ALJ determined that “the severity of the claimant’s
20 mental impairment does not meet or medically equal the criteria of listing 12.04 [depressive,
21 bipolar, and related disorders].” (*Id.* at 3726.)

22 **D. RFC Determination**

23 The ALJ then determined that plaintiff had the RFC to perform light work as defined in 20
24 C.F.R. 416.967(b) with the following modifications: plaintiff “required a sit or stand option every
25 fifteen minutes [and] should avoid respiratory irritants such as fumes, odors, dusts, gases, and
26 poor ventilation.” (*Id.* at 3728.) Further, she found that plaintiff “retains the ability to engage in
27 simple, repetitive tasks equating to unskilled work.” (*Id.*)

1 **E. Step Four**

2 At Step Four, the ALJ found that the claimant was unable to perform any past relevant
3 work as a retail sales clerk, childcare provider, cashier, or home health aide. (*Id.* at 3726.)

4 **F. Step Five**

5 At Step Five, the ALJ considered Ms. Zuniga’s “age, education, work experience, and
6 residential functioning capacity” and determined that “there are jobs that exist in significant
7 numbers in the national economy that the claimant can perform.” (*Id.* at 3736.) Further, she found
8 that the vocational expert’s testimony was consistent with the “Dictionary of Occupational Titles”
9 and “Selected Characteristics of Occupations.” (*Id.* at 3737). On such bases, she found that
10 claimant was not disabled as defined under the SSA. (*Id.*)

11 **IV. DISCUSSION**

12 Plaintiff argues that the ALJ committed the following errors: (i) failing to reevaluate
13 Zuniga’s subjective migraine testimony on remand; (ii) using boilerplate language in rejecting
14 Zuniga’s subjective testimony on the intensity, persistence, and limiting effects of her migraine
15 symptoms; (iii) affording “little weight” to the medical opinion of Dr. Rubin; and (iv) failing to
16 give any consideration to numerous other medical sources.

17 **A. Credibility of Plaintiff’s Testimony**

18 *1. Legal Standard*

19 To assess a claimant’s subjective testimony, an ALJ must engage in a two-step inquiry.
20 *Tommasetti v. Astrue*, 533 F. 3d 1035, 1039 (9th Cir. 2008) (citing *Smolen v. Chater*, 80 F.3d
21 1273, 1281–82 (9th Cir. 1996)). First, “the claimant ‘must produce objective medical evidence of
22 an underlying impairment’ or impairments that could reasonably be expected to produce some
23 degree of symptom.” *Id.* Second, if the claimant provides the evidence required by step one, and
24 there is no affirmative evidence of malingering, then the ALJ can reject the claimant’s testimony
25 as to the severity of the symptoms “only by offering specific, clear and convincing reasons for
26 doing so.” *Id.* (citing *Smolen*, 80 F.3d at 1283–84). “The clear and convincing standard is the
27 most demanding required in Social Security cases.” *Garrison v. Colvin*, 759 F.3d 995, 1014 (9th
28 Cir. 2014); (citation omitted). An ALJ “may find the claimant’s allegations of severity to be not

1 credible,” but the ALJ “must specifically make findings which support this conclusion.” *Bunnell*
2 v. *Sullivan*, 947 F.2d 341, 345 (9th Cir. 1991). In other words, “[t]he ALJ must state specifically
3 which symptom testimony is not credible and what facts in the record lead to that conclusion.”
4 *Smolen*, 80 F.3d at 1284.

5 “These findings, properly supported by the record, must be sufficiently specific to allow a
6 reviewing court to conclude the adjudicator rejected the claimant’s testimony on permissible
7 grounds and did not arbitrarily discredit a claimant’s testimony regarding pain.” *Bunnell*, 947 F.2d
8 at 345 (internal quotation marks and citation omitted). The ALJ may consider, among others,
9 inconsistencies between a claimant’s testimony and conduct, daily activities, work record, and
10 testimony from physicians and third parties concerning the nature, severity, and effect of the
11 symptoms of which a claimant complains. *Thomas v. Barnhart*, 278 F.3d 947, 958–59 (9th Cir.
12 2002). But “[i]f the ALJ’s credibility finding is supported by substantial evidence in the record,”
13 the reviewing court “may not engage in second-guessing.” *Id.* at 959.

14 2. *Discussion*

15 Plaintiff asserts that the ALJ “violated [Judge Breyer’s] mandate to reevaluate Ms.
16 Zuniga’s migraine testimony” or stated differently, reevaluate plaintiff’s testimony in light of the
17 potential correlation between plaintiff’s migraines and her history of stroke which Dr. Lee
18 identified. (Dkt. No. 49 at 12.) Ms. Zuniga claims that the ALJ failed to do so and relied on
19 boilerplate language in rejecting Ms. Zuniga’s subjective testimony.³

20 Plaintiff does not persuade. In rejecting plaintiff’s testimony as to the severity of her
21 symptoms the ALJ stated “specific, clear and convincing reasons for doing so.” *Tommasetti*, 533
22 F.3d at 1039 (citing *Smolen*, 80 F.3d at 1283–84). First, the ALJ found that the “[o]bjective
23 imaging studies do not support plaintiff’s subjective allegations to the extent alleged.” (AR 3729.)

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³ Plaintiff further argues without citation to the record that “[p]ursuant to the Court’s
26 mandate, the ALJ had to accept Dr. Lee’s opinion that Ms. Zuniga’s migraine headache evidence
27 was supported by medically acceptable diagnostic techniques.” (Dkt. No. 49 at 12.) Not so. The
28 remand order specifically indicates that Dr. Lee’s opinion “arguably tied [plaintiff’s migraine
claims] to such techniques” and that the “correlation identified by Dr. Lee is not necessarily
causation.” (AR 2940-41 (emphasis supplied).) The remand order did not require the ALJ to
accept Dr. Lee’s opinion regarding potential correlation.

1 The ALJ specifically discussed Ms. Zuniga’s “lumbar spine MRI from July 2009” which was
2 unchanged since a prior November 2007 MRI. (*Id.* (citing AR 481, 589).) Next, she noted that
3 “[l]umbosacral imagining from January 2010” and “lumbar discography in February 2010” also
4 reflected an unchanged condition. (*Id.* (citing AR 894, 3474).) She further stated that an “MRI of
5 the lumbar spine dated April 5, 2013” revealed only “minimal progression of degenerative disc
6 and facet joint changes.” (*Id.* (citing AR 3504, 3474).)

7 Second, the ALJ found that plaintiff’s “statement about ‘excruciating pain’ were not made
8 to a treatment provider and were unsupported by the clinical findings.” (*Id.*) Specifically, the
9 treatment records from Kaiser Permanente (“Kaiser Records”) “indicate her migraines and asthma
10 were under reasonably good control with only infrequent ER or other medical contacts.” (*Id.*
11 (citing AR 332).) Further, the ALJ highlighted that the Kaiser Records indicated that plaintiff’s
12 hypothyroidism was under “good control.” (*Id.*)

13 Third, the ALJ stated that “claimant reported good daily activities” including “preparing
14 simple meals, house cleaning, getting her children dressed and ready for school, driving . . . going
15 out multiple times per day, using the computer, reading . . . and swimming in the pool thirty
16 minutes per day.” (*Id.*) Fourth, she noted that plaintiff’s treating pharmacist wrote on March 3,
17 2010, “that the claimant’s response to conservative treatments had been good and that she had a
18 fair functional level.” (*Id.* (citing AR 895).)

19 Finally, the ALJ specifically addressed the District Court remand and concluded that Dr.
20 Lee’s treatment notes did not change her evaluation of plaintiff’s subjective testimony. (*Id.* 3730.)
21 Dr. Lee’s treatment notes dated July 19, 2013, indicate that plaintiff’s history of cryptogenic
22 stroke was “possibly migraine related.” (AR 3535-36, 3654.) Dr. Lee hypothesized alternatively
23 that plaintiff’s history of stroke could be related to a “protein S” deficiency or a type of “atrial
24 septal aneurysm.”⁴ (AR 3667.)

25 The Court disagrees that the ALJ failed to analyze plaintiff’s credibility in light of Dr.
26 Lee’s opinion as required by Judge Breyer. The ALJ first noted that Dr. Lee’s treatment records
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28 ⁴ As Judge Breyer noted, “the correlation identified by Dr. Lee is not necessarily causation.” (Dkt. No. 37 at 11.)

1 indicate that “an MRI of the brain from April 2012 showed *no significant change* except for
2 expected evolution *from 2011.*” (*Id.* 3731 (citing AR 3535) (emphasis supplied).) Second, the
3 ALJ highlighted that although Dr. Lee identified “migraine-associated vasospasm” as a possible
4 cause of plaintiff’s strokes, Dr. Lee also stated that “MRIs of the head and neck done on April 21,
5 2013, were normal, so the cause of the two strokes remained unclear.” (*Id.* (citing AR 3554–3558,
6 3574).) Third, the ALJ noted that Dr. Lee’s treatment records identified two alternative causes,
7 namely either “[l]ow protein S [or] atrial septal aneurysm” may have been the cause of plaintiff’s
8 strokes. (*Id.* (citing AR 3574).)

9 The Court thus finds that the ALJ properly reevaluated Ms. Zuniga’s testimony pursuant to
10 the District Court mandate and stated specific, clear and convincing reasons for rejecting the same.
11 See *Tommasetti*, 533 F.3d at 1039 (citing *Smolen*, 80 F.3d at 1283–84). Specifically, the ALJ
12 declined to credit plaintiff’s subjective testimony regarding migraines in light of (i) the objective
13 imaging studies, (ii) Kaiser Records, (iii) plaintiff’s own testimony regarding robust daily
14 activities, and (iv) Dr. Lee’s mixed medical opinions regarding plaintiff’s condition and the source
15 of her strokes.

16 **B. Physician Opinions**

17 *1. Legal Standard*

18 In determining whether a claimant is disabled within the meaning of the SSA, the ALJ
19 must consider all medical opinion evidence. *Tommasetti*, 533 F. 3d at 1041. Medical opinions are
20 arranged in a hierarchy of three groups, namely opinions from (i) treating physicians, (ii)
21 examining physicians, and (iii) non-examining physicians, with the opinions of treating physicians
22 generally accorded the most weight. See *Valentine v. Comm’r of Soc. Sec. Admin.*, 574 F.3d 685,
23 692 (9th Cir. 2009) (noting that there are three types of medical opinions in social security cases);
24 *Turner v. Comm’r of Soc. Sec. Admin.*, 613 F.3d 1217, 1222 (9th Cir. 2010) (explaining that
25 opinions of treating physicians are entitled to more weight than opinions of examining
26 physicians). The rationale for giving greater weight to a treating physician’s opinion is that he or
27 she is employed to cure and has a greater opportunity to know and observe the patient as an
28 individual. *Sprague v. Bowen*, 812 F.2d 1226, 1230 (9th Cir. 1987) (citations omitted).

1 The applicable regulation ordinarily requires the agency to give a treating physician's
2 opinion "controlling weight" so long as it "is well-supported by medically acceptable clinical and
3 laboratory diagnostic techniques and is not inconsistent with the other substantial evidence in [the]
4 case record." 20 C.F.R. § 404.1527(c)(2). "If a treating or examining doctor's opinion is
5 contradicted by another doctor's opinion, an ALJ may only reject it by providing specific and
6 legitimate reasons that are supported by substantial evidence." *Ryan v. Comm'r of Soc. Sec.*, 528
7 F.3d 1194, 1198 (9th Cir. 2008) (quoting *Bayliss*, 427 F.3d at 1216). "Where an ALJ does not
8 explicitly reject a medical opinion or set forth specific, legitimate reasons for crediting one
9 medical opinion over another, [she] errs." *Garrison*, 759 F.3d at 1012; *See Nguyen v. Chater*, 100
10 F.3d 1462, 1464 (9th Cir.1996).

11 "The ALJ can meet this burden by setting out a detailed and thorough summary of the facts
12 and conflicting clinical evidence, stating his interpretation thereof, and making findings." *Cotton*
13 *v. Bowen*, 799 F.2d 1403, 1408 (9th Cir. 1986). "The ALJ must do more than offer his
14 conclusions. He must set forth his own interpretations and explain why they, rather than the
15 doctors', are correct." *Garrison*, 759 F.3d at 1012 (quoting *Reddick*, 157 F.3d at 725). "This is so
16 because, even when contradicted, a treating or examining physician's opinion is still owed
17 deference and will often be 'entitled to the greatest weight'" *Id.* (quoting *Orn*, 495 F.3d at
18 633). The opinion of a non-examining physician "cannot by itself constitute substantial evidence"
19 justifying the ALJ's rejection of a treating or examining physician. *Lester v. Chater*, 81 F.3d 821,
20 831 (9th Cir. 1995), *as amended* (Apr. 9, 1996); *see also Pitzer v. Sullivan*, 908 F.2d 502, 506 n. 4
21 (9th Cir. 1990).

22 "If a treating physician's opinion is not given 'controlling weight' because it is not 'well-
23 supported' or because it is inconsistent with other substantial evidence in the record, the Social
24 Security Administration considers specific factors in determining the weight it will be given."
25 *Orn*, 495 F.3d at 631. "Those factors include the length of the treatment relationship and the
26 frequency of examination by the treating physician; and the nature and extent of the treatment
27 relationship between the patient and the treating physician." *Id.* (internal quotations and citations
28 omitted). "Additional factors relevant to evaluating any medical opinion, not limited to the

1 opinion of the treating physician, include the amount of relevant evidence that supports the
2 opinion and the quality of the explanation provided, the consistency of the medical opinion with
3 the record as a whole, and the specialty of the physician providing the opinion.” *Id.*

4 2. *Discussion*

5 a. *Doctor Rubin*

6 Plaintiff claims that the ALJ erred by failing to provide “specific and legitimate reasons
7 that are supported by substantial evidence” for declining to afford the medical opinions of treating
8 physician Dr. Rubin’s controlling weight.⁵ *See Ryan.*, 528 F.3d at 1198 (9th Cir. 2008) (quoting
9 *Bayliss*, 427 F.3d at 1216). In a letter dated May 25, 2015, Dr. Rubin stated that plaintiff had a
10 long history of migraine headaches and that plaintiff “reported an average of four to five
11 headaches a month, and because of the intensive of the headaches, he would not expect her to be
12 able to work at all on the days when she has the headaches.” (AR 3730 (citing AR 765).)
13 Dr. Rubin’s treatment notes dated July 31, 2013, further indicate a migraine diagnosis including
14 two “moderate to severe” headaches per week lasting “several hours per episode.” (AR 966.)
15 Next, he stated that plaintiff required unscheduled breaks from work “several times per week”
16 lasting “hours to a day” which rendered plaintiff incapable of even “low stress jobs” because pain
17 from migraines and other conditions “are substantial [and] stress would exacerbate this.” (*Id.* at
18 969.)

19 The Court finds that the ALJ articulated specific and legitimate reasons for affording Dr.
20 Rubin’s opinion little weight. First, she incorporated into her opinion the objective medical
21 evidence discussed in the January 2013 decision of the Initial ALJ . (*Id.* 3730 (citing AR 895).)
22 There, that ALJ noted that Dr. Rubin’s medical opinion was contradicted by a “State Agency
23 medical consultant” who “determined in September 2010 that claimant could engage in sedentary

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⁵ Plaintiff also argues that Judge Breyer required the ALJ to “accept Dr. Rubin’s opinions
26 of her migraine headaches as being supported by medically acceptable clinical or laboratory
27 diagnostic techniques.” (Dkt. No. 49 at 14.) As previously stated, plaintiff does not persuade. The
28 remand order specifically indicated that the new medical evidence “arguably tied [plaintiff’s
migraine claims] to such techniques.” (AR 2940-41 (emphasis supplied).) The remand order did
not require the ALJ to accept that Dr. Rubin’s opinion was supported by acceptable clinical or
laboratory diagnostic techniques.

1 activity with occasional postural limitations and the avoidance of asthma irritants and hazards.”
2 (AR 895.) The State Agency consultant’s determination was affirmed by a second medical
3 consultant in February 2011. (*Id.*) Second, the ALJ highlighted that a “brain MRI from May 2010
4 was normal.” (AR 3730 (citing AR 895.)) Third, she discussed the Kaiser Records which
5 indicated that Ms. Zuniga’s migraines were “under reasonably good control with only infrequent
6 ER or other medical contacts.” (*Id.* 3729 (citing AR 332).) Fourth, as noted the ALJ highlighted
7 Ms. Zuniga’s testimony regarding relatively robust daily activities. (*Id.*) Fifth, she found that the
8 March 3, 2010, treatment notes from plaintiff’s treating pharmacist indicated “that the claimant’s
9 response to conservative treatments had been good and that she had a fair functional level.” (*Id.*
10 3730 (citing AR 895.)) Finally, the ALJ noted that Dr. Lee himself found no significant changes
11 in an April 2012 MRI except for the expected evolution from an October 2011 MRI. (*Id.* 3731
12 (citing AR 3535).) Accordingly, the ALJ found that Dr. Rubin’s opinion was largely “based on
13 the claimant’s self-reported compliant only.” (*Id.* 3730.) The ALJ then specifically addressed the
14 district court’s remand order in stating that Dr. Rubin’s opinion was entitled to “little weight” even
15 after taking into account Dr. Lee’s July 19, 2013, treatment notes and reevaluating plaintiff’s
16 subjective testimony. (*Id.*)

17 For the reasons discussed above, the Court finds that the ALJ articulated specific and
18 legitimate for affording Dr. Rubin’s opinion little weight. Plaintiff’s criticism fails.

19 ***b. Other Medical Sources***

20 Finally, plaintiff avers that the ALJ erred in failing to give “any consideration to numerous
21 medical sources,” namely Dr. Saphir,⁶ Dr. Dolnak, Dr. Dwyer, Dr. McMahon, Dr. Cheng, Dr.
22 Speradino, Dr. Weems, and Dr. Truong. However, the District Court did not order the ALJ to
23 reevaluate or reconsider the opinions of these medical sources on remand. The District Court’s
24 order on remand was relative narrow: First, Judge Breyer instructed the ALJ to consider Dr. Lee’s
25 July 19, 2013, medical opinion in reevaluating plaintiff’s credibility. Second, the ALJ was

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⁶ In any event, Dr. Saphir’s opinion is limited to the time period after April 22, 2013,
28 which is not at issue in the summary judgment motions before this Court.

1 instructed “[to] address whether, in light of the new evidence, Ms. Zuniga’s impairments also
2 existed during the period adjudicated under the January 2013 Decision” (*i.e.* from March 31, 2004
3 to January 31, 2013). (Dkt. No. 37 at 10-11.) For the reasons discussed above, the Court finds that
4 the ALJ properly followed the District Court’s instructions on remand. *See Sections IV.A.2, B.2,*
5 *supra.*⁷ She was not required to reassess every aspect of this case which has been pending for
6 nearly ten years.⁸

7 **V. CONCLUSION**

8 For the foregoing reasons, the Court **DENIES** plaintiff’s motion and **GRANTS** defendant’s
9 cross-motion for summary judgment. No later than seven (7) days from the date of this Order,
10 defendant must file a proposed form of judgment, approved as to form by plaintiff.

11 This Order terminates Docket Numbers 49 and 58.

12 **IT IS SO ORDERED.**

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14 Dated: February 5, 2018



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YVONNE GONZALEZ ROGERS
UNITED STATES DISTRICT COURT JUDGE

⁷ The Court notes that Judge Breyer previously found that the medical reports of Dr. Dolnak, Dr. Dwyer, and Dr. McMahon were consistent with the Initial ALJ’s findings. (Dkt. No. 31.)

⁸ Similarly, the ALJ was not required to consider “Ms. Zuniga’s lumbar back pain [or] her affective disorders.” (Dkt. No. 49 at 11.)